

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Vanderwende *et al.***Application No.** 08/227,247**Filed:** April 13, 1994**Confirmation No.** 2310**For:** SEMANTIC RELATION**Examiner:** Joseph Thomas**Art Unit:** 2644**Attorney Reference No.** 3382-40231-01CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP PETITION, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney
for Applicant(s)Date Mailed September 24, 2004

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Enclosed for filing in the application referenced above are the following:

- ☒ Petition Under 37 C.F.R. § 1.182 Requesting Immediate Examination
- ☒ Petition Fee of \$130.00 as set forth in § 1.17(h)
- ☒ A check in the amount of \$130.00 to cover the above-listed fees
- ☒ The Director is hereby authorized to charge any additional fees that may be required, or credit over-payment, to Deposit Account No. 02-4550. A copy of this sheet is enclosed.
- ☒ Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By


Stephen A. Wight

Registration No. 37,759

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 226-7391
Facsimile: (503) 228-9446
cc: Docketing

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In re application of: Vanderwende *et al.*

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Art Unit: 2644

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PETITION UNDER 37 C.F.R. § 1.182 REQUESTING IMMEDIATE EXAMINATION

STATEMENT OF FACTS

This application has been pending for over ten years. In 1997, Applicant filed an appeal (No. 1997-0887) from an Office action; in 1999, the Board of Patent Appeals and Interferences issued an opinion and declared the case not in condition for a decision at that time (Paper No. 17). The Board remanded the application to the Examiner with instructions to more carefully and specifically apply the prior art to the claimed invention. The Board's decision also stated that the application required "immediate action" because of its "special" status.

The Board remanded the application almost five years ago—since then, the Examiner has failed to produce an Office action. In that time, Applicant has contacted the Examiner (actually, several different Examiners over the five-year period) at least five times by telephone (November 17, 2000; November 21, 2001; July 19, 2002; August 8, 2002; June 10, 2004) and has submitted at least one request for status information. The Examiner has given the following explanations, among others: the Examiner needed to search for better prior art than that available in the record; the Examiner had moved to a new position with additional responsibilities; the application needed to be transferred to a different art unit; the Examiner planned to see to the application after returning from vacation. The Examiner once suggested canceling the rejected claims and filing a continuation, but this would prejudice the interests of Applicant.

Applicant recognizes that the Examiner carries a demanding workload. However, Applicant also feels that it is not unreasonable to expect an Office action within a five-year period.

The Examiner has effectively failed to follow the Board's instructions to treat the application as special and to more carefully and specifically apply the prior art to the claimed invention. The remedy for such action by an Examiner is by way of a petition to the Commissioner. *See Ex parte Barley*, 116 USPQ 592, 593 (Bd. App. 1957). As this issue does not seem to be specifically provided for in the regulations, Applicant seeks a decision under 37 C.F.R. § 1.182. Enclosed is the petition fee set forth in § 1.17(h).

POINTS TO BE REVIEWED

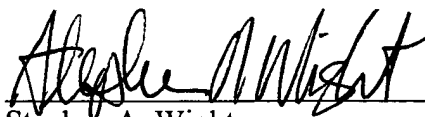
Applicant respectfully requests that the Commissioner review the Examiner's inaction, including the Examiner's apparent failure to honor the application's special status. This includes the Examiner's failure to properly apply the prior art per the Board's instructions.

ACTION REQUESTED

Applicant respectfully requests that the Commissioner instruct the Examiner to immediately examine the application and draft an appropriate Office action. Alternatively, Applicant requests that the Commissioner reassign the application to an Examiner who is in a position to conduct immediate examination.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

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Portland, Oregon 97204
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